

This Page Is Inserted by IFW Operations
and is not a part of the Official Record

BEST AVAILABLE IMAGES

Defective images within this document are accurate representations of the original documents submitted by the applicant.

Defects in the images may include (but are not limited to):

- BLACK BORDERS
- TEXT CUT OFF AT TOP, BOTTOM OR SIDES
- FADED TEXT
- ILLEGIBLE TEXT
- SKEWED/SLANTED IMAGES
- COLORED PHOTOS
- BLACK OR VERY BLACK AND WHITE DARK PHOTOS
- GRAY SCALE DOCUMENTS

IMAGES ARE BEST AVAILABLE COPY.

**As rescanning documents *will not* correct images,
please do not report the images to the
Image Problem Mailbox.**

REMARKS

Entry of the foregoing election of invention and election-of-species and an early examination on the merits of the above-identified patent application are respectfully requested in view of the foregoing elections and the following remarks.

The second Office Action pertaining to the above-identified patent application consisted of a requirement for restriction under 35 U.S.C. §§121 and 372, as between the following groupings of claims which the Examiner has contend-ed represent distinct inventions:

Group I: Claims 18 and 33-39, drawn to a method of SO₂ moni-toring, classified in Class 600, subclass 331; and,

Group II: Claims 40-51, drawn to a method of monitoring oxy-
genation, classified in Class 600, subclass 323.

Applicant has elected the invention of "Group II," as recited in Claims 40-51 for prosecution in the instant application.

By virtue of Applicant's election of the invention of Group II (i.e., Claims 40-51), the Examiner's second Office Action also requires Applicant to elect between two species-of-invention for monitoring the oxygenation of blood, pursuant to 35 U.S.C. §121:

Species A: A method of monitoring oxygenation of blood based

on a measured absorption spectrum, readable upon
Claims 40-44; and,

Species B: A method of monitoring oxygenation of blood based
on an optimal spectrum, readable upon Claims
45-51.

Applicant has elected the species-of-invention as recited in
Claims 45-51 (*i.e.*, Species B), to which this application is
to be limited, if no generic claim is ultimately held to be
allowable.

Finally, Applicant wishes to advise the Examiner that an
Information Disclosure Statement is being prepared and is
anticipated to be filed by early June 2004. The Examiner is,
therefore, respectfully requested to await receipt of the
forthcoming Information Disclosure Statement prior to issu-
ance of the next Office Action, which is expected to address
the merits of the subject matter of Applicant's invention, as
herein elected.

Accordingly, entry of the foregoing election-of-species,
an early examination on the merits (following receipt of
Applicant's Information Disclosure Statement) and the allow-

ance of all claims are respectfully requested and earnestly solicited.

Respectfully submitted,

DAWOOD PARKER

By


Edwin D. Schindler

Attorney for Applicant
Reg. No. 31,459

Five Hirsch Avenue
P. O. Box 966
Coram, New York 11727-0966

(631)474-5373

May 24, 2004

The Commissioner is hereby authorized to charge the Deposit Account of Applicant's Attorney, Account No. 19-0450, for any additional fees which may be due in connection with the prosecution of the present application, but which have not otherwise been provided for.